

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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PHILLIP P. CHMIEL

Plaintiff,

v.

ORDER  
09-CV-555

JACK E. POTTER,

Defendant.

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This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1) on August 19, 2010. On October 15, 2009, defendant filed a motion for summary judgment and on August 9, 2010, plaintiff filed motions to compel and for a continuance. On December 7 2010, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that defendant's motion to dismiss and/or for summary judgment be granted and that plaintiff's motions to compel and for a continuance be denied as moot.

Plaintiff filed an objection to the Report and Recommendation on December 21, 2010. Oral argument on the objections was held on February 22, 2011.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and

Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendant's motion to dismiss and/or for summary judgment is granted and plaintiff's motions to compel and for a continuance are denied as moot. The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

*s/ Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: March 2, 2011